**COURT-II**
**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**
**(Appellate Jurisdiction)**

**IA No.166 of 2018 IN**
**DFR NO. 3234 OF 2017**

**Dated: 13th February, 2018**

**Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member**
**Hon'ble Mr. S.D. Dubey, Technical Member**

**In the matter of:**

**Maharashtra State Electricity Distribution Company Ltd. … Appellant(s)**

**Vs.**

**Maharashtra Electricity Regulatory Commission & Anr. … Respondent(s)**

Counsel for the Appellant (s) : Mr. G. Saikumar
Ms. Nikita Choukse
Ms. Sowmya Saikumar

Counsel for the Respondent(s) : Mr. Milanka Chaudhary
Ms. Aastha Bajaj for R-2

# ORDER

## *(IA No.165 of 2018 – Delay in filing)*

1. The instant application has been filed by the Appellant for condoning the delay of 148 days in filing the appeal.

2. We have heard the learned counsel, Mr. G. Saikumar, appearing for the Appellant and the learned counsel, Mr. Milanka Choudhary, appearing for the second Respondent at considerable length of time.

3. The learned counsel appearing for the Appellant has drawn our attention to the explanation offered in the instant application which reads as under:

*"3. It is submitted that the chronology of dates & events in the matter causing the delay in filing the Appeal is as below:-*

| | | |
|---|---|---|
| *16.03.2017* | *:* | *MERC passed Impugned common order.* |
| *29.03.2017* | *:* | *The copy of Impugned common order was received by the Appellant* |
| *31.03.2017* | *:* | *Office Note was initiated by the Chief Engineer for Appraisal of matter and seeking opinion for filing the appeal against the Impugned order to the Competent Authority viz, Chairman & Managing Director through proper channel [(Chief Legal Advisor, Executive Engineer (Commercial), Director (Finance)].* |
| *04.04.2017* | *:* | *The Competent Authority opined for the matter to be placed before the Board of Director of MSEDCL for their approval.* |
| *10.04.2017* | *:* | *The Board of Directors accorded the approval for filing the appeal against the Impugned Order with the applicable legal provisions.* |
| *29.04.2017* | *:* | *The Chief Engineer referred the matter to the Competent Authority by putting Office Note for approval of engaging the legal firm in matter.* |
| *12.05.2017* | *:* | *The Competent Authority approved to engage the legal firm. Since MSEDCL decided to file 9 (Nine) Appeals against the Impugned Common Order of MERC, it took considerable time for its preparation as data was required from the concerned department to ascertain the amount involved in the matter of each generator.* |
| *19.05.2017* | *:* | *The matter was handed over to the Legal Firm along with all documents for drafting and filing the instant appeal.* |
| *05.06.2017* | *:* | *The Legal Firm had sent first draft of the appeal to the Appellant for their approval.* |
| *14.07.2017* | *:* | *The Chief Engineer submitted the said draft to the Competent Authority for approval/ legal opinion through proper channel.* |
| *06.09.2017* | *:* | *The Competent Authority of the Appellant accorded approval on the draft for fling of Appeal.* |
| *07.09.2017* | *:* | *The affidavits for filing the appeal along with the other supporting documents and annexure were sent to the Legal firm which was received by them on 09.09.2017.* |
| *25.09.2017* | *:* | *It is submitted that collating the data and documents for all 9 appeals took some time and with everything in place the present appeal was finally fled for the first time on 25.09.2017.* |

*4. It is most humbly submitted that the Applicant herein is a Public Sector Undertaking bound to act in strict compliance/accord of all internal procedures and protocols. That despite all efforts, obtaining necessary approvals took considerable time which led to an inadvertent delay of 148 days in filing the appeal which delay is neither intentional nor deliberate. Moreover, without prejudice to the fact that the Appellant received a copy of the Impugned Order dated 16.03.2017 only on 29.03.2017, for abundant caution, the above-stated delay has been calculated from the date of the Impugned Order itself i.e. 16.03.2017.*

*5. It is most humbly submitted that another appeal, dealing with same issue of payment of Delay Payment Charges, filed by the Appellant being Appeal No. 75 of 2017 admitted by this Hon'ble Tribunal vide daily order dated 20.03.2017 is already listed for final arguments on 05.02.2018 before Court-I of this Hon'ble Tribunal. In view thereof, it is submitted that the Appellant has a good case on merits and in case the delay is not condoned, the Appellant being a revenue neutral entity, thus the public at large would suffer grave prejudice and irreparable loss/injury by paying higher tariffs."*

4. Further, the learned counsel for the Appellant submitted that, the Appellant being a Public Sector Undertaking bound to act in accordance with law and following the procedure in taking necessary orders, the file has moved from one section to another section and under these circumstances, the delay has been caused. The reasoning for the delay in filing the appeal, as has been explained satisfactorily in paragraphs 3 to 5 of the statement dated 27.01.2018 filed by the Appellant, as stated above, may kindly be accepted and delay in filing the appeal may kindly be condoned. If the delay in filing the appeal is not condoned, the Appellant will put in a great hardship, inconvenience and its additional burden would ultimately fall on the consumers. Taking all these facts into consideration, he submitted that, the delay in filing the appeal ma kindly be condoned and Appeal may be heard on merits in the interest of justice and equity.

5. *Per-contra,* the learned counsel appearing for the second Respondent submitted that, except making bald statements, the Appellant has set out only dates

without providing why delay took place. The said delay has not been explained except giving omnibus statements to show how file moved from one place to another. It is settled law that justification is required for each day of delay and condonation cannot be demanded by a party as a matter of right. Inspite of an opportunity given by this Tribunal, no attempt has been made by the Appellant to explain the delay. Not even a single document is attached to the application or the affidavit to corroborate the reasons stated for delay. He vehemently submitted that, there is no bonafide shown in the application, in fact, the Appellant has released amounts against previous invoices for the Andhra Lake Project and for the Jath Project after the date of impugned Order until November, 2017. Not only this, the Appellant has also approached the Respondent to waive DPC pursuant to which the payments on outstanding invoices were agreed to be released to the Respondent and sent a letter to release the payment towards outstanding amount, therefore, the present appeal is an afterthought clearly with a motive to deprive the legitimate right of the Respondent to its rightful dues and therefore, application filed by the Appellant may be dismissed on the ground of delay and latches.

6. Further, he submitted that, entire purpose of filing the appeal is to delay and defer making payments to the Respondents. The Appellant has no case on merit and the Appellant has used dilatory tactics to delay paying the dues. Taking all these facts into consideration, he submitted that, the reasons assigned in the instant application for condoning the delay cannot be acceptable and delay in filing should not be condoned and the instant Appeal filed by the Appellant may be dismissed as devoid of merits.

7. After careful consideration of the submissions made by the learned counsel appearing for both the parties and after careful perusal of the statement made in

paragraphs 3 to 5 of the application filed by the Appellant for condonation the delay in filing the appeal and the reply filed by the second Respondent opposing the condonation of delay in filing the appeal, it is significant to note that what emerges from the averments made by the learned counsel appearing for both the parties in the instant application and reply filed by the Respondent's counsel, it is not in dispute that the Appellant is a Public Sector Undertaking and is bound to follow the procedure prescribed for taking decisions to redress their grievances before the appropriate Legal Forum. Bonafide regarding the movement of the file from one department to another department and dates & events causing the delay in filing the appeal has been narrated in para 3 and also procedures to be followed has been stated in para 4 of the application filed by the Appellant.

8. Further, it is stated that another appeal dealing with the same issue of payment of delay payment charges filed by the Appellant being Appeal No. 75 of 2017 admitted by this Tribunal vide daily Order dated 20.03.2017 is already listed for final arguments on 05.02.2018 before Court-I of this Tribunal. The said bonafide shown by the Appellant and explaining offered for condoning the delay in filing the appeal is satisfactory and sufficient cause has been made out for considering the mater on merits. Whereas, it is the case of the second Respondent that, except making bald statements made in paragraphs 3 to 5, the Appellant has set out only dates without providing why delay took place. Inspite of an opportunity given by this Tribunal, no attempt has been made by the Appellant to explain the delay. there is no bonafide as such has been shown in the application, in fact, the Appellant has released amounts against previous invoices for the Andhra Lake Project and for the Jath Project after the date of impugned Order until November, 2017. Not only this, the Appellant has also approached the Respondent to waive DPC pursuant to which the payments on outstanding invoices were agreed to be released to the Respondent and sent a letter to

release the payment towards outstanding amount, therefore, the present appeal is an afterthought clearly with a motive to deprive the Respondent to its rightful dues. It is pertinent to note that another appeal arising out of the same Order is pending for consideration before this Tribunal is not disputed by the learned counsel appearing for the second Respondent.

9. Taking into consideration the facts and circumstances of the case in hand, we are of the considered view that the delay in filing the instant appeal has been explained satisfactorily and sufficient cause has been shown. We do not find any justification to accept the stand taken by the Respondents in their objections opposing the condonation of delay in filing the instant Appeal. The reason assigned is bonafide in nature specifically taking into consideration the fact that the Appellant is a Public Sector Undertaking and in view of the well settled law laid down by the Apex Court and this Tribunal, in host of judgments, it is held that the Tribunal should take lenient view whenever the grievances redress by the Public Sector Undertaking on the ground that they have been governed under the relevant provisions of the Acts and Rules and procedure. Taking all these relevant facts into consideration, as stated above, we deem it fit to condone the delay in filing the Appeal and also taking into consideration that arising out of the same order the Appellant has filed another Appeal, being Appeal No. 75 of 2017 on the file of the Appellate Tribunal for Electricity which is admitted and is pending at the stage of hearing and this fact has not been disputed by the learned counsel appearing for the Respondents. Hence, the instant application is deserved to be allowed by imposing some costs by way of compensation for condoning the delay in filing the Appeal in the interest of justice and equity.

10. In view of the above facts and circumstances, the instant application, being IA No. 166 of 2018 is allowed and the delay is condoned subject to condition that the Appellant shall pay a cost of sum of Rs.25,000/- (Rupees Twenty Five Thousand only) to the ***National Defence Fund, PAN No. AAAGN0009F, Collectio A/c No. 11084239799 with State Bank of India, Institutional Division, 4th Floor, Parliament Street, New Delhi*** within a period of two weeks from today. If the said amount is not being paid within two weeks from today, the Order shall stands disposed of without further orders.

## DFR NO. 3234 OF 2017

11. Registry is directed to number the Appeal and post this matter for admission on ***13.03.2018*** after compliance.

**(S.D. Dubey)**
**Technical Member**

**(Justice N. K. Patil)**
**Judicial Member**

*vt*